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SUBJECT: COMMISSION OF INQUIRY INTO POST-ELECTION VIOLENCE PRESENTS

REPORT TO PRESIDENT AND PRIME MINISTER

¶1. On September 15, the Commission of Inquiry into Post-Election Violence (CIPEV) -- which was formed as part of the Kofi Annan-mediated settlement of Kenya's post-election crisis (reftel) -- presented its report to President Mwai Kibaki. Kibaki then ordered the report to be released immediately. The report recommends concrete measures to improve performance and accountability of state security agencies and enhance coordination within state security mechanisms, including: strengthening joint operational preparedness arrangements; developing comprehensive operational review processes; merging the Administration Police and the Kenya Police Service; and establishing an Independent Police Complaints Authority. The report also recommends the creation of a special tribunal with the mandate to prosecute crimes committed as a result of post-election violence. The tribunal will have an international component in the form of the presence of non-Kenyans on the senior investigations and prosecution staff. The text of the Executive Summary follows at paragraph 3.

¶2. Poloff spoke to George Kegoro, the Secretary to the CIPEV. Kegoro stated that Kibaki and Odinga have already positively commented on the report and its recommendations. According to Kegoro, Odinga indicated that the report will be discussed at the next Cabinet meeting.

¶3. To follow is the text of the Executive Summary.

Begin text.

The mandate of the Commission of Inquiry into Post-Election Violence (CIPEV) was to investigate the facts and circumstances surrounding the violence, the conduct of state security agencies in their handling of it, and to make recommendations concerning these and other matters.

The Report comprises 5 Parts. Part I of the Report is an Introduction which discusses the historical context of the violence; Part II is a narration of the violence province by province. Part III deals with four cross cutting issues: sexual violence, internally displaced persons, the media and the nature and impact of the violence. Part IV deals with acts and omissions of state security agencies and impunity; and Part V contains recommendations made with a view to the prevention of future reoccurrence of large scale violence; the investigation of alleged perpetrators; and how to tackle the culture of impunity that has become the hallmark of violence and other crimes in the country. Sadly, violence has been a part of Kenya's electoral processes since the restoration of multi party politics in 1991. However, the violence that shook Kenya after the 2007 general elections was unprecedented. It was by far the most deadly and the most

destructive violence ever experienced in Kenya. Also, unlike previous cycles of election related violence, much of it followed, rather than preceded elections. The 2007-2008 post-election violence was also more widespread than in the past. It affected all but 2 provinces and was felt in both urban and rural parts of the country. Previously violence around election periods concentrated in a smaller number of districts mainly in Rift Valley, Western, and Coast Provinces.

As regards the conduct of state security agencies, they failed institutionally to anticipate, prepare for, and contain the violence. Often individual members of the state security agencies were also guilty of acts of violence and gross violations of the human rights of the citizens.

In some ways the post-election violence resembled the ethnic clashes of the 1990s and was but an episode in a trend of institutionalization of violence in Kenya over the years. The fact that armed militias, most of whom developed as a result of the 1990s ethnic clashes, were never de-mobilized led to the ease with which political and business leaders reactivated them for the 2007 post-election violence. Secondly, the increasing personalization of power around the presidency continues to be a factor in facilitating election related violence.

The widespread belief that the presidency brings advantages for the President's ethnic group makes communities willing to exert violence to attain and keep power. Inequalities and economic marginalization, often viewed in ethnogeographic terms, were also very much at play in the post-election violence in places like the slum areas of Nairobi.

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One of the main findings of the Commission's investigations is that the postelection violence was spontaneous in some geographic areas and a result of planning and organization in other areas, often with the involvement of politicians and business leaders. Some areas witnessed a combination of the two forms of violence, where what started as a spontaneous violent reaction to the perceived rigging of elections later evolved into well organized and coordinated attacks on members of ethnic groups associated with the incumbent president or the PNU party. This happened where there was an expectation that violence was inevitable whatever the results of the elections.

The report concludes that the post-election violence was more than a mere juxtaposition of citizens-to-citizens opportunistic assaults. These were systematic attacks on Kenyans based on their ethnicity and their political leanings. Attackers organized along ethnic lines, assembled considerable logistical means and traveled long distances to burn houses, maim, kill and sexually assault their occupants because these were of particular ethnic groups and political persuasion. Guilty by association was the guiding force behind deadly "revenge" attacks, with victims being identified not for what they did but for their ethnic association to other perpetrators. This free-for-all was made possible by the lawlessness stemming from an apparent collapse of state institutions and security forces.

In general, the police were overwhelmed by the massive numbers of the attackers and the relatively effective coordination of the attacks. However, in most parts of the country affected by the violence, failure on the part of the Kenya Police and the Provincial Administration to act on intelligence and other early warning signs contributed to the escalation of the violence.

The post-election violence is also the story of lack of preparedness of, and poor coordination among, different state security agencies. While the National Security Intelligence Service seemed to possess actionable intelligence on the likelihood of violence in many parts of the country, it was not clear whether and through which channel such intelligence was shared with operational security agencies. The effectiveness of the Kenya Police Service and the Administration Police was also negatively affected by the lack of clear policing operational procedures and by political expediency's adverse impact

on
their policing priorities.

The report recommends concrete measures to improve performance and accountability of state security agencies and coordination within the state security mechanism, including strengthening joint operational preparedness arrangements; developing comprehensive operational review processes; merging the two police agencies; and establishing an Independent Police Complaints Authority.

To break the cycle of impunity which is at the heart of the post-election violence, the report recommends the creation of a special tribunal with the mandate to prosecute crimes committed as a result of post-election violence. The tribunal will have an international component in the form of the presence of non-Kenyans on the senior investigations and prosecution staff. End Text.

14. Post will continue to monitor closely public reaction to the report and government actions to implement it. We are coordinating with resident diplomatic missions on a joint Heads of Mission statement of support for the CIPEV report and urging implementation of its recommendations. Post will transmit the contents of the statement septel.
RANNEBERGER